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MEMORANDUM

TO: Honorable Members of the Assembly Committee on Insurance

FROM: Sarah Diedrick-Kasdorf, Senior Legislative Associate

DATE: March 11, 2010

SUBJECT: Opposition to Assembly Bill 179

The Wisconsin Counties Association (WCA) opposes Assembly Bill 179, which eliminates the requirement that a person must provide written notice of a medical malpractice claim to the Attorney General or to a local governmental body or its representative prior to beginning a lawsuit against a state officer, employee, agent or against a local governmental body or its officers, officials, agents or employees. The bill also increases, from $50,000 to $250,000, the damages limit applicable to a medical malpractice action against a local governmental health care provider or its representatives.

WCA respectfully requests that the committee amend Assembly Bill 179 to reflect the action taken by the Senate in its companion bill, Senate Bill 127. Senate Bill 127, as adopted by the Senate, removes the language raising the general $50,000 damages limit applicable to local governments to $250,000.

Thank you for considering our comments.

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MEMORANDUM

To: Members of the Assembly Committee on Insurance

From: Atty. Lisa Roys
Public Affairs Director
State Bar of Wisconsin

Date: March 11, 2010

Re: State Bar of Wisconsin Support for Assembly Bill 179 and Senate Bill 127 – State notification in medical malpractice cases

The State Bar of Wisconsin supports Assembly Bill 179 and its companion bill, Senate Bill 127. The Senate approved Senate Substitute Amendment 1 to Senate Bill 127 on a bipartisan 26-7 vote on February 16, 2010.

As amended in the Senate, this legislation removes the requirement that a person injured by medical malpractice involving a state officer, employee, or agent serve notice of claim with the Attorney General within 180 days of the injury. As the bill provides, persons so injured should be allowed to commence that action within the same time period that is required when a claim is against a private health care provider. The bill would effectively apply the same 3-year statute of limitations for medical malpractice cases for privately run health systems to state officers and other governmental bodies.

Under current law, injured patients must notify the state or other governmental body of a potential malpractice claim within 180-days if they were treated by physicians or other health care professionals at a health facility operated by a governmental body and medical malpractice results in injury or death to a family member. Privately run health systems are subject to a three-year statute of limitations for the same claims.

This unequal treatment is problematic in several respects. Obtaining medical records can be a burdensome process, which can create problems with the short time period allowed to file a claim. Also, most people do not know about the 180-day period for state-run facilities since no one is legally obligated to inform patients of the length of the statute of limitations, creating a trap for the unwary. Victims of medical malpractice should not be penalized by losing their right to proceed in court for failure to know about the notice requirement and comply within 180 days.

Wisconsin families should be afforded fair and equal protection under the law, regardless of which hospital or doctor they use.

The State Bar of Wisconsin strongly urges you to support AB 179 and SB 127.

If you have any questions, please feel free to contact Adam Korbitz, Government Relations Coordinator, at (608) 250-6140.

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PUBLIC HEARING ON
SENATE BILL 127 AND ASSEMBLY BILL 179
MARCH 11, 2010

TESTIMONY OF
ERIC FARNSWORTH
ON BEHALF OF THE
WISCONSIN ASSOCIATION FOR JUSTICE

CHAIR CULLEN AND MEMBERS OF THE COMMITTEE, my name is Eric Farnsworth. I am a partner in the law firm of Dewitt, Ross & Stevens in Madison, Wisconsin. I serve on the Board of Directors of the Wisconsin Association for Justice, formerly the Wisconsin Academy of Trial Lawyers. Thank you for the opportunity to appear today to testify in support of Senate Bill 127 and Assembly Bill 179.

Under current law, injured patients and their families must notify the state or other governmental body of a potential malpractice claim within 180-days of discovery if they were treated by physicians or other health care professionals at a health facility operated by a governmental body, i.e., UW Hospital & Clinics or UW Health/Physicians Plus, and medical malpractice results in injury or death to a family member. Privately run health systems are subject to a 3-year statute of limitations for the same claims.[1]

[1] Injured minors are subject to a longer statute of limitation under Wis. Stat. § 893.56.

Senate Bill 127, as amended, and Assembly Bill 179 eliminates the 180-day notice requirement for medical malpractice claims filed against doctors who are government employees under Wis. Stat. § 893.82 and § 893.80.

In medical malpractice cases, the 180-day notice requirement is particularly harsh. It takes many patients longer than six months to recover before they even begin to think about contacting a lawyer. There can also be difficulty in getting the patient's records. It can take months to receive the patient's medical records, which leaves little time to properly evaluate the potential malpractice claim. Having to explain this harsh rule to families is one of the saddest situations our members, who represent injured consumers, confront.

Here in Dane County, there is a confusing maze of coverages, which can lead to a trap for the unwary. In 1995 the UW Hospital became an "Authority" and is no longer state-owned. However, the physicians practicing at the UW Hospital remain state employees and are covered by the 180-day notice requirement. Second, the 200 doctors of Physicians Plus Medical Group merged with UW Medical Foundation on February 1, 1998, and became state employees. This means patients with a potential claim have less time to file a medical malpractice action against a Physicians Plus doctor who may be working at Meriter, private hospital.

An additional wrinkle was just added to the mix, when the Wisconsin Supreme Court ruled in *Rouse v. Theda Clark Medical Center Inc., et al.* 2007 WI 87, that the University of Wisconsin Hospital and Clinic Authority (UWHCA) is a "political corporation" under Wis. Stat. § 893.80 and claimants are subject to the 180-day notice provisions in that statute. This means that residents and other UWHCA employees (e.g. nurses or pharmacists) fall under Wis. Stat. § 893.80, not § 893.82. This creates a dangerous maze for the unwary. How does one know if they are seeing a resident or a doctor?

As a patient, trying to sort out this quagmire is very difficult, especially within 180 days. It is a situation wrought with confusion both for the patient and attorney. Patients have no idea when they are being treated, who's a state employee, who's an Authority employee or who isn't. Often this cannot be determined until there is discovery. Patients shouldn't be

penalized by losing their right to proceed in court for failure to navigate through this quagmire in 180 days.

During the legislative process in the Senate, that part of SB 127 that applied the same $250,000 cap on all damages for health care providers under § 893.80 as under § 893.82, was removed from the bill. It is still in AB 179.

I'd like to explain why this provision is important, particularly as it relates to UWHCA employees. Currently, there is a $50,000 cap under § 893.80. The cap applies to all damages, including medical expenses. This amount is so low it is virtually impossible to bring a medical malpractice case against an employee of the UWHCA. The doctors working at the UWHCA are members of the UW Foundation and are already covered by the state cap of $250,000 under § 893.82.

This provision simply put the employees in the same position they were in prior to the UW Hospital becoming the UWHCA: they would have a $250,000 cap on their liability.[2]

We understand there is some hesitation to adopt such a provision, but the issue is about access to the courts. Our goal has been simple: Wisconsin families should be afforded fair and equal treatment under the law, regardless of which hospital or health care provider is used. We believe that AB 179 does that more fairly, but we would urge passage of either Senate Bill 127, as amended, or Assembly Bill 179.

[2] Prior to the creation of the UWHCA, employees of the UWHCA were state employees and covered under Wis. Stat. § 893.82.